

PT 97-21
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

PEORIA ASSOCIATION FOR)		
RETARDED CITIZENS, INC.)		
Applicant)		
)	Docket #	94-72-78
v.)		
)	Parcel Index #	09-31-400-044
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Stephen J. Thomas appeared on behalf of the Peoria Association for Retarded Citizens, Inc.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on June 11, 1996, to determine whether or not Peoria County Parcel No. 09-31-400-044 and the building thereon should be exempt from real estate taxation for the 1994 assessment year.

Mr. Ron Wisecarver, president of the Peoria Association for Retarded Citizens, Inc., (hereinafter referred to as the "Applicant") and Mr. Stuart Schmitt, vice president of the applicant, were present and testified on behalf of the applicant.

The issues in this matter include first whether the applicant owned this parcel during the 1994 assessment year. The second issue is whether the applicant is a charitable organization. The third issue is whether the applicant leased this parcel for profit during a portion of the 1994 assessment year. The final issue is whether the applicant was in the process of adapting this parcel for exempt use during a portion of the 1994 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the period March 10, 1994, through December 31, 1994. It is also determined that the applicant is a charitable organization. It is further determined that the applicant leased this parcel for profit from the date it was acquired through September 30, 1994. Finally, it is determined that the applicant was in the process of adapting this parcel for exempt use during the period October 1, 1994, through December 31, 1994. Consequently, this parcel and the building thereon qualified for exemption during the period October 1, 1994, through December 31, 1994.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issue qualified for exemption for 25% of the 1994 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 8B.

2. On July 25, 1994, the Peoria County Board of Review transmitted an Application for Property Tax Exemption To Board of Review concerning this parcel for the 1994 assessment year to the Department. (Dept. Ex. No. 1)

3. On October 19, 1995, the Department notified the applicant that it was approving the exemption of this parcel for 25% of the 1994 assessment year. (Dept. Ex. No. 2)

4. By a letter dated October 30, 1995, the vice president of the applicant requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter which took place on June 11, 1996, was held pursuant to that request.

6. The applicant acquired this parcel by a warranty deed dated March 10, 1994. (Dept. Ex. No. 1D)

7. The Director of Revenue granted the applicant an exemption for 25% of the 1994 assessment year. (Dept. Ex. No. 2)

8. I take Administrative Notice of the fact that the Director granted exemptions to the applicant in Docket Nos. 86-72-82 and 86-72-83.

9. I therefore find that the Department has determined that the applicant is a charitable organization.

10. For about a year during 1993, the applicant had been looking for a place where it could consolidate all of its facilities in Peoria into one location. The building on this parcel, a large, open, former, millwork building was being leased to several lessees for storage. Starting in late 1993, the applicant began negotiations with the then owner of this parcel, Mr. Ardell Glasgow, to purchase the parcel. (Tr. pp. 8 & 9)

11. During the negotiations, it became clear that there had been a gasoline storage tank and a kerosene storage tank on the property which had been removed by Mr. Glasgow. The Illinois Environmental Protection Agency had some concerns about the former location of these tanks. It was agreed that Mr. Glasgow would sell the parcel and the building, less a small area on which the storage tanks had been located, to the applicant. Mr. Glasgow would keep the excised former tank location area and deal with the EPA concerning its cleanup. (Tr. pp. 9, & 13-15)

12. During February 1994, Mr. Glasgow abruptly determined that he wanted to close on the sale of the parcel and building, excluding the former tank location area. The applicant then determined that although it was still negotiating for permanent financing to purchase the property and remodel the building thereon, it was in its best interest to obtain a bridge loan and go ahead and acquire the property. (Tr. p. 10)

13. This parcel, which was conveyed to the applicant on March 10, 1994, contains 7.721 acres of land and the entire building, and has been assigned parcel index No. 09-31-400-044 by the supervisor of assessments. The area where the gasoline and kerosene storage tanks had been located, which is still owned by Mr. Glasgow, has been assigned parcel index No. 09-31-400-011 by the supervisor of assessments. (Tr. pp. 13-15)

14. The applicant took possession of this parcel in the middle of March of 1994. At that time, the applicant was not ready to begin remodeling, because it had not obtained permanent financing. In addition, the applicant was incurring expenses on the building, primarily the debt service on the bridge loan. Consequently, the applicant advised the building tenants of the former owner that they could continue to rent space in the building on a month to month basis. (Tr. pp. 10-11)

15. At the time that the applicant took possession of the property, there were four lessees of the former owner in the building. They were Peoria Plastics, CDO Distribution, Inc., the Drapery Shop, and Pizza Box. (Tr. p. 16, & Dept. Ex. No. 1I)

16. The building on this parcel contains approximately 98,700 square feet. The four tenants of the former owner, during late March of 1994, occupied 46,080 square feet. (Tr. p. 17, & Dept. Ex. No. 1I)

17. At the end of March, Peoria Plastics vacated the space that it had occupied, so the leased square footage dropped to 36,000 square feet during April. (Tr. pp. 17 & 18, & Dept. Ex. No. 1I)

18. By May 1, 1994, the Drapery Shop and CDO Distribution, Inc. vacated the space they had occupied and Customer Development Corporation moved in. Customer Development Corporation, which had a business relationship with the applicant, needed space to store inventory for a very large order it was processing, so the applicant leased them space in the building. (Tr. pp. 11 & 20)

19. Customer Development Corporation and Pizza Box occupied a total of 31,680 square feet of space in the building using it for storage during the months of May, June, July, August, and September, 1994. At the end of September, all tenants had vacated the premises at the applicant's request so that remodeling could begin. (Tr. pp. 20 & 21, & Dept. Ex. No. 1I)

20. The total amount of the rent which the applicant received from the for-profit enterprises, which rented space in the building from March 10, 1994, through September 30, 1994, was \$48,326.45. (Tr. p. 24, Dept. Ex. No. 1I)

21. On October 1, 1994, the applicant entered into a contract with P.J. Hoerr, Inc. for the remodeling work to be performed on the building on this parcel. (Dept. Ex. No. 1N)

22. The City of Peoria issued a commercial alteration permit to P.J. Hoerr, Inc. on November 9, 1994, for the remodeling work on this building. (Dept. Ex. No. 1L)

23. Shortly thereafter, the remodeling work began and continued to completion. The applicant moved into the building on October 1, 1995 and is using it as its administrative offices, developmental training facility, and sheltered workshop. (Tr. p. 12, Dept. Ex. No. 1)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944)

and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

I have previously found that the Department has determined that the applicant is a charitable organization in Docket Nos. 86-72-82, 86-72-83 as well as the initial determination in this case.

It is clear that the applicant continued to rent portions of the building on this parcel to the for-profit lessees of the former owner and solicited an additional tenant for the purpose of defraying the debt service on the bridge loan while it was in the process of obtaining permanent financing for the purchase and remodeling of the building on this parcel. Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also the Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

After obtaining permanent financing, the applicant asked the lessees to leave the building by September 30, 1994, entered into a contract for the modeling work, and actually began work in November, 1994. The remodeling was completed and the applicant moved into the building on this parcel on October 1, 1995. Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v.

Skinner, 49 Ill.2d (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). I conclude that the applicant was in the process of adapting this parcel and the building thereon for charitable use during the period October 1, 1994, through December 31, 1994.

I therefore recommend that Peoria County Parcel No. 09-31-400-044 be exempt from real estate taxation for 25% of the 1994 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
June 9, 1997